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## REVIEWS.

*An Examination of the Nature of the State: A Study in Political Philosophy.* By WESTEL WOODBURY WILLOUGHBY, Ph. D. New York and London, Macmillan & Co., 1896. — xii, 448 pp.

This work embodies the lectures given by Dr. Willoughby at Leland Stanford, Jr. and at Johns Hopkins. It is an honor to American scholarship. It reveals in its author an admirable comprehension of the essential problems of political philosophy, a thorough acquaintance with the solutions already proposed and an intellectual equipment that is entirely adequate to the origination and maintenance of new solutions.

The scope of Dr. Willoughby's present work is very well defined in his own words: "The general postulates of political science, and incidentally . . . the history of political theories." In this field his general position on all the leading topics is that which seems to the reviewer most consonant with a sound interpretation of objective history and most fruitful in the development of philosophical truth. His care to discriminate between state and government, his rejection of the dogmas of natural law and the social contract, his criticism of the conception of the state as an organism and his whole theory of sovereignty illustrate what has just been said. It would not be inaccurate to describe Dr. Willoughby's doctrine as a modified Austinism. His premises are clearly those of the analytical jurists; but his conclusions show the strong influence of the profounder analysis effected by Burgess, Dicey, T. H. Green and Ritchie.

A selection of the most striking among the many instances of effective argumentation which the book affords would include the following: the overthrow of the contract theory by the denial of its fundamental assumption and the contention that "*freedom* exists only because there is *restraint*" (pp. 109, 110); the demonstration that the origin of the state is to be found in the sentiment of a people, and not in the formulation of a written constitution (pp. 130, 131); the solution of the vexed question as to the relation of custom and judge-made law to positive law by the affirmation that "judicial legislation is *ex post facto* legislation," though not attended with the injustice of *ex post facto* statutes (pp. 175, 176); the proof of the futility of prohibitions to amend a constitution (pp. 218, 219); and the very close

and exact reasoning by which the conclusion is reached that "it is not the amount of change, but the manner in which such change is effected, that determines whether or not a new body politic is created" (pp. 230, 231). Of great clearness also is Dr. Willoughby's analysis of "The Composite State." He justly declares that the term federal state properly designates merely "a state in which a very considerable degree of administrative autonomy is given to the several districts into which the state's territory is divided." He contributes much to the economy of brain matter and ink by a frank and rational *non possumus* in respect to the precise historical determination of the moment of a state's creation (p. 273). Finally, he ends a careful discussion of the three classic forms of government with the useful conclusion that the terms monarchy, aristocracy and democracy have value not so much in describing governmental organization as in pointing to various degrees in which political consciousness is diffused (p. 366).

If, by the side of the points of excellence in which the book abounds, one should search critically for defects, little of consequence would reward the effort. Exception might be taken to some statements on the historical side of political theory. There is the reflection of a very widespread error in the remark (p. 46) that "as the See of Rome increased in power and importance it began to claim powers other than those embraced in this principle [independence of, and superiority to, the state in spiritual affairs]." In strict accuracy the attitude of the Papacy should be described as that of seeking, by liberal construction of the term "spiritual affairs," to include under the term an ever-wider range of subjects. The church did not claim secular powers as such. Again, it is quite too strong to say that the idea of contract as a basis for the state was "*prominent* in the contests over investitures" (p. 57); and it is a flat error to attribute to Bodin the idea that absolute monarchy is the only possible form of state (p. 371). The relations between Nicaragua and the Musquito Indians, and between Holland and Luxemburg, have ceased, probably since the chapter was written, to be available for the use to which they are put (pp. 235, 238). In some of his many references to Hobbes, Dr. Willoughby seems to miss the point of that doughty philosopher's thought. Thus, Hobbes's natural rights in the state of nature are said to be founded on "morality and utility" (p. 64); while, in fact, "morality" has no relation, save that of perfect antithesis, to his natural rights. Again, the logical justification of Hobbes's "natural law" that covenants be performed is denied

(p. 107), although in the very next paragraph reference is made to the key to such justification, namely, Hobbes's conception of reason as merely a somewhat superior form of natural instinct—a better instrument for the satisfaction of desires. And the ascription to Hobbes of the idea that “no natural law . . . can persist after the origin of political society” (p. 392) is so flatly in contradiction of Hobbes's own words, quoted by Dr. Willoughby on pages 69 and 70, as to be quite inexplicable.

As intimated above, some of Dr. Willoughby's best work appears in connection with one of the most fundamental doctrines of the volume, namely, the distinction between state and government. This distinction is rightly declared to be of the utmost importance, and is carefully elaborated. The state is the politically conscious “people,” in its most abstract conception; the government is the aggregate of organs through which the will of the state is expressed. The government has no will of its own: it is a mechanism, while the state is self-conscious, volitional and organic. The state, in fact, “exists only as a supreme, controlling will, and its life is only displayed in the declaration of binding commands” (p. 302). This is intelligible, even if it does make of the state a pretty vague and intangible entity. But we learn that the state is organized only in the government. Under government, however, the author includes constitution-making and constitution-amending bodies, as well as the ordinary legislative, executive and judicial organs. All acts, therefore, which fall within the purview of political science are acts of the state through the instrumentality of the government. Only through the government is the state known; without government there is no state. And the sovereignty, which is the essential characteristic of the state, is in the government, as thus widely conceived. This analysis discards alike the doctrine of Burgess, who seeks to give the state, as distinct from the government, an abode in the constitution-making power, and that of Dicey, Ritchie and others, who find in the various organs through which public opinion is expressed a depository of “political sovereignty,” which is distinct from the “legal sovereignty.”

Dr. Willoughby's system has, beyond doubt, certain advantages over the others. But one very distinct disadvantage, from the practical point of view, is the danger that lies in the doctrine that the government is sovereign. Despite his dictum to the contrary, a government has a will. Like any other aggregate of individuals in which there is basis for a “consciousness of kind,” to use Professor Giddings's apt phrase, the government evolves a corporate personality of its own,

which is likely to come in conflict with the greater personality of the state. Such conflict, whether merely logical or of a more practical kind, may be avoided by assigning to the state a definite existence apart from the government. Another disadvantage of Dr. Willoughby's system, interesting but perhaps not so important, lies in the fact that in its demonstration the political philosopher commits scientific suicide. The study of governmental organization already belongs to constitutional law. The system we are considering proposes to throw over to sociology, already waiting to receive it, the study of public opinion and the other political forces that lie outside of governmental organization. What is to be left for political philosophy?

WM. A. DUNNING.

*Introduction to Political Science.* By J. R. SEELEY. New York and London, Macmillan & Co., 1896. — xi, 387 pp.

Under the above title are posthumously published two courses of lectures, which, contrary to Professor Seeley's wont, had been reduced to full written statement. The discursive style indicates the conversational method of instruction usually employed by their author; but this, though at times leading to prolixity, does not prevent the presentation of a very considerable body of interesting and valuable observations within the limited compass of the book. The introductory lecture, which is devoted to a statement of the necessary relationship between history and political science, both explains the purpose and suggests the chief value of the work. The one is the statement of a method; and the other, its fruitful application in the subsequent lectures. The method consists of the use of the inductive material afforded by history in the interpretation of political facts; and the specific application of this method is to the solution of that vexed question—the classification of states. Of the various characteristics which may form the basis of such classification, we shall be able to dwell only upon one—namely, the possession or non-possession of a “government-making” organ—which Professor Seeley has very happily selected and fruitfully applied.

All governments depending, as Hume says, on opinions rather than force, the government-making power in every state rests on that “group of persons, small or large, foreign or native, disinterested or selfish, upon whose support the government depends.” Such a group necessarily exists in every state, but whether or not it possesses a definite organ through which its will may habitually and